SUPREME COURT OF THE UNITED STATES.

1491.

No. 143.

HIRAM BENNER, JOSEPH B. BROWNE, AND SALISBURY HALEY, ASSIGNEES OF ELEAZER P. HUNT, APPELLANTS,

vs.

JOSEPH Y. PORTER.

APPEAL FROM THE DISTRICT COURT U. S. FLORIDA.

INDEX.

	Original.	Print.
Libel	1	2
Monition	5	4
Marshal's return	6	5
Schedule, marked A, referred to in 3d article of libel	6	5
Interrogatories filed by libellant	11	9
Protest and answer of respondents	13	11
Exceptions to respondents' answers	22	16
Order for further answer of respondents	23	16
Libellant excepts to answering certain interrogatories propounded by respondents	23	16
Exceptions overruled	23	16
Additional interrogatories filed by libellant	24	17
Order to answer interrogatories	24	17
Replication of libellant	25	17
Libellant's answers to interrogatories	25	18
Stipulation of libellant	27	19
Respondents' amended answers to certain interrogatories	28	19
Answer of J. B. Browne	30	20
Libellant's answers to certain interrogatories	33	22
Stipulation of respondents	34	23
Stipulation of respondent, Benner	35	24
Decree of superior court	35	24
Appeal prayed by respondents, and allowed	35	25
Appeal prayed by libellant and allowed	36	25
Order of district court for transfer of records, papers, &c., of late superior court to district court	37	25
Appeal prayed in district court	37	25
Appeal allowed	38	25
Clerk's certificate	38	26
Judge's certificate	39	26
Clerk's and marshal's fee bills	40	26
Clerk's certificate	42	28

J. & G. S. Gideon, printers.

United States district court, southern district of Florida, in admiralty.

JOSEPH Y. PORTER,
vs.
THE PROCEEDS of sloop Texas, in the hands of Hiram Benner, Joseph B. Brown, and Salisbury Haley, assignees of Eleazer P. Hunt. } In personam.

Be it remembered, that, on the twenty-fourth day of March, in the year one thousand eight hundred and forty-six, Joseph Y. Porter, by S. R. Mallory, esq., his proctor, filed in the clerk's office of the late superior court for the southern district of Florida his libel in personam against the proceeds of sloop Texas, in the hands of Hiram Benner, Joseph B. Browne, and Salisbury Haley, assignees of Eleazer P. Hunt, in a cause of contract, civil and maritime, in form following:

The libel of Joseph Y. Porter against the proceeds of the sloop Texas.

Your libellant respectfully propounds as follows:

1st. At various times, during the years 1843 and '4, he supplied the sloop Texas, of Key West, of the burthen of $86\frac{4}{9}\frac{7}{5}$ tons, (or thereabouts,) with ship stores, chandlery, &c., upon the request of the master and owner of said vessel, to the amount of $1203.02. The said sloop was then, and is still, engaged in the business of wrecking on the Florida coast and upon the high seas. The said stores, chandlery, &c., were necessary and proper for her use in her said business, and without them she could not have pursued her said business; and they were sold and delivered as aforesaid upon the faith and credit of said sloop, and upon the request of the master and owner thereof.

2. By virtue of the general admiralty law of the country, and the statute of the Territory of Florida, approved on the 4th day of March, 1841, a lien accrued to your libellant on the said sloop Texas, for the full amount and value of the said supplies, chandlery, &c; and he was entitled to have the said vessel, and she was liable to be, sold to pay your libellant's demand.

3. A schedule of these said supplies, chandlery, &c., is hereunto annexed, as evidence and for reference in this cause, and the same is marked A.

4. On the 22d day of February, 1844, your libellant filed his libel and complaint in this honorable court, to enforce his lien against the said sloop, as a material man, upon which she was arrested by process of this court, and held to answer its decree upon said libel; and, on the 6th day of November, 1844, Hiram Benner, Joseph B. Browne, and Salisbury Haley, the assignees of Eleazer P. Hunt, filed in this honorable court their claim and answer to said libel, and on the 15th day of November, 1844, at the final hearing of said cause, the said libel was

dismissed, it appearing that the said libel had been filed subsequent to the attachment which it prayed for upon said vessel.

On or about the 14th day [of] February, 1844, after the said supplies had been furnished as aforesaid to said sloop, and the lien of your libellant had accrued as aforesaid, the said Eleazer P. Hunt became insolvent, and executed, at Key West, on or about the said day, by deed, an assignment of the said sloop Texas, together with other property, to the aforesaid Hiram Benner, Salisbury Haley, and Joseph B. Browne, for the benefit of his creditors; and it was by virtue of this assignment that they filed their claim and answer aforesaid to said libel.

6. On the 9th day of December, 1844, your libellant filed his libel in personam, in this honorable court, against the said Eleazer P. Hunt, for the amount and value of said supplies. Process duly issued thereupon. The answer of said Hunt was filed in this court, on the 16th December, 1844, and on the 26th December, 1844, a decree of this court was rendered against him, in favor of your libellant, for the full amount and value of his said lien, claim, and demand, for said supplies, chandlery, &c., to wit, $1223.02. Upon this decree, and in default of payment, said Hunt was duly imprisoned. He escaped from prison; fled to a (then) foreign country; and the said lien, claim, and demand of your libellant, for and on account of said supplies, provisions, and ship stores, still remains wholly and entirely unpaid, and there are no effects of any kind, to the knowledge of your libellant, belonging to said Hunt, within the jurisdiction of this court.

7. On the 20th day of December, 1844 the said assignees sold and delivered the said sloop Texas to John H. Geiger, Asa F. Tift, Benjamin Sawyer, and Samuel Kemp, for the sum and consideration of sixteen hundred and forty dollars.

8. The said assignees have received the full amount of the said consideration.

9. When the said assignees sold, conveyed, and delivered the said sloop as aforesaid, and when they received the consideration money therefor, they had full, due, and sufficient notice that your libellant had the aforesaid, lien, claim, and demand against the said sloop; and they sold and conveyed the same upon their own risk and responsibility.

10. The lien, claim, and demand of your said libellant, for and on account of said supplies, chandlery, &c., which accrued to him as aforesaid, and upon the said sloop and against said E. P. Hunt, is equally as valid and sufficient, in all respects, against the proceeds and consideration of said sloop, arising from the sale thereof, in the hands of said assignees; and your libellant charges and alleges that he has a valid and bona fide lien, by virtue of the premises aforesaid and the said decree in personam, against the said proceeds, and that the said assignees are legally and equitably liable to pay to your libellant the amount of his said demand against the sloop.

11. And your said libellant says that, in consideration of the premises aforesaid, he has a valid and bona fide lien against the said assignees, for the full amount of his claim and demand for said ship-

stores, provisions, &c. Your libellant sets forth that this is a cause of contract, civil and maritime, and within the admiralty and maritime jurisdiction of this honorable court; and he prays your honor will cause a special citation to issue and be served to and upon each and every one of the said mentioned assignees, viz., Hiram Benner, Salisbury Haley, and Joseph B. Browne, to compel them, without unreasonable delay, to appear before this honorable court, and answer, upon oath, all and singular the matters set forth in this libel; that your honor will compel such appearance and answer, or punish them or either of them for contumacy; that you will carry out and enforce the said decree in personam against E. P. Hunt; that you will decree the said assignees to pay unto your libellant, out of the said proceeds, his said claim and demand; that you will compel them, without regard to said proceeds, to pay the same unto your libellant; that you will hold them, their goods and chattels, rights and credits, liable and bounden unto your libellant for his said claim of $1223.02; and that finally, you will grant and decree unto your libellant such other and further relief, remedy, and redress, in the premises, as unto equity may appertain, and will forever pray.

JOSEPH Y. PORTER.

Sworn to before me, this 11th day of March, 1846.

FERNANDO J. MORENO,
Notary Public.

NOTE.—The respondents will please notice answer on oath, the interrogatories hereunto annexed.

S. R. MALLORY, *Proctor.*

AT CHAMBERS, *March 23d*, 1846.

Let a brief monition issue, citing Joseph B. Browne, Salisbury Haley, and Hiram Benner, to appear and answer the libel against the proceeds of the sloop Texas, in their hands, returnable the first Monday in April next, at the court-house in Key West, at ten o'clock, A. M.

WM. MARVIN, *Judge.*

Whereupon, on the said 24th day of March, 1846, monition was issued from said court in the form and words following:

UNITED STATES OF AMERICA,
Southern judicial district of Florida.

To the marshal of the superior court for the said district.

Pursuant to an order of the judge of the said court, you are hereby commanded, forthwith, to cite Joseph B. Browne, Salisbury Haley, and Hiram Benner, to appear before the said court at an admiralty session thereof, to be held at the court-house in Key West, on Monday, the sixth day of April next, at ten o'clock in the forenoon, to answer the libel of Joseph Y. Porter, against the proceeds of the sale of the sloop Texas, now or lately in their hands; which libel was filed in the registry of the said court on the twenty-fourth day of March, instant. And

how you shall have executed this precept, make known to this court at the time and place aforesaid, and have you then this writ.

Witness the Hon. William Marvin, judge of the said court at Key West, in the said district, this 24th day of March, in the year 1846.

[SEAL.]

L. WINDSOR SMITH, *Clerk*.

Which monition was returned by said marshal, with his return thereon endorsed, as follows:

Came to hand the 24th day of March, 1846, and executed forthwith in accordance with the within order.

J. B. BROWNE, *U. S. Marshal*.

The following is a copy of the schedule referred to in article third of said libel:

A.

KEY WEST, FLORIDA.

Sloop Texas, and owners, to J. Y. Porter, Dr.

1843.		
May 17	2 boxes salt, 50 cents, 1 lb. pepper, 25 cents -	$0 75
	2 cases mustard, $1 00, 2 galls. sp. oil, $3 -	4 00
	2 galls. vinegar, $1 00, ½ lb. spice, 12 cents -	1 12
	2 " H. oil, $3 00, 1 bot. sweet oil, 63 cents -	3 63
	5½ yds. buntine, 3s. - - - -	2 06
	1 doz. sail needles, 75 cents, 2 lb. twine, $1 50	2 25
	2 lb. green tea, $2 50, 6 lb. black tea, $6 00 -	8 50
	1 keg white lead, $3 00, 2 galls. bright varnish, $1 25 - - - - -	4 25
	2 small paint brushes, 50 cents, 8 lb. teizling stuff, $2 00 - - - - -	2 50
	9¾ lb. spun yarn, 18¾ - - - -	1 83
	1 bush. beans, $3, 100 lb. rice, $5 - -	8 00
	5 galls. tar, 50 - - - - -	2 50
	1 keg blk. lead, $3 50, fish-hooks, 7s. - -	4 38
	6 hanks, 75 cents, 1 lb. Prus. blue, $1 50 -	2 25
	25 bunches onions - - - -	2 00
	Fish lines, 37 cts., pitch, 25 cts., 1 bbl. bread, $5	5 62
18	Hickory brooms, $1 00 - - -	1 00
	1 globe lamp, $2 50, 1 corn broom, 38 - -	2 88
	1 lb. saleratus, 25, 1 frying pan, 75 - -	1 00
	1 tin pan, 5s. - - - - -	62
June 10	1 bolt No. 3 canvass, 50 yds., 45 - -	22 50
13	1 anchor - - - - -	25 50
	1 box tea, $6 00, 2 galls. vinegar, 75 cts. -	6 75
	12 yds. canvass - - - -	6 00
27	1 bbl. pork - - - - -	12 00

Schedule A—Continued.

1843.		
July 5	1 lb. pepper - - - - -	$0 25
6	2 lb. cotton twine - - - -	1 00
7	2 galls. lamp oil, $3, 2 galls. varnish, $1 50 -	4 50
12	1 bbl. pork, $12 00, 1 bbl. flour, $8 00 -	20 00
21	1 jar pickles - - - - -	87
22	1 bbl. molasses, 38½ galls., 25 - - -	9 63
	20 lb. butter, 25 cts., jar, 75 cts. - -	5 75
	1 bot. sweet oil, 63 cts., 1 lb. sewing twine, 75	1 38
	2 lb. saleratus - - - - -	50
Aug. 11	1 bbl. flour, $8, 1 bag coffee, 167 lbs., 10 cts., $16 70 - - - - -	24 70
	1 bush. beans, $1 50, 1 can chrome yellow, $1 50	3 00
	6 mugs, 75 cts., 3 large spoons, 37 - -	1 13
	6 small spoons, 2s, 2 qrs. sand paper, 6s. -	1 00
	4 brooms, $1 00, matches, 50 - - -	1 50
	3 scrub brushes - - - -	75
	4 lb. pepper, $1 00, 2 gimlets, 50 cts. - -	1 50
	2 bbls. mess pork, $24, 6 lb. tea, $6 - -	30 00
	1 set knives and forks, $1 25, 2 galls. vinegar, 75	2 00
	2 galls. sp. oil, $3, 1 ball wicking, 25 cts. -	3 25
	2 cans mustard, 50, 1 pap. tacks, 75 - -	1 25
	1 rasp, 75, 4 bars soap, $1 - - -	1 75
	2 H. S. files, 25, fish hooks, $1 - -	1 25
	3 fish lines, $1 13, 8 lb. nails, 80 - -	1 93
	6½ lb. ratlin, 16 cts., $1 04, 1 grope line, $1 -	2 04
	1 ladle, 75 cts., 3 lb. teizing stuff, 25 cts., 75 -	1 50
	1 pr. grains, $1, 4 oars, 64 feet, $6 20 - -	7 20
	½ lb. spice, 13, 1 bottle salad oil, 63 - -	76
24	1 bbl. beef, $12, 1 bbl. pork, $12 - -	24 00
Sept. 4	1 " flour, $9, 10 galls. vinegar, $3 75 -	12 75
11	1 " beef, $12, 1 bbl. pork, $13 - -	25 00
	½ bush. beans - - - - -	1 50
Oct. 12	50 lb. coffee, $6 25, 19 lb. butter, $4 75 -	11 00
13	6 yds. No. 10 canvass, 3s. - - - -	2 25
	½ doz. needles, 25 cts., 1 bbl. flour, $7 -	7 25
	1 bbl. mess pork, $13, 2 bbls. mess beef $24 -	37 00
	8 lb. green tea, $8, 42 galls. molasses, 35 cts., $14 70 - - - - -	22 70
	1 lb. allspice, 25, mace, cloves, and nutmegs, 75	1 00
	1 basin and ewer, $1, bush. beans, $3 - -	4 00
	2 scrub brooms, $1 50, 1 coil manilla, 96 lbs., 15 cts., $14 40 - - - - -	15 90
	15 lb. teizing stuff, 18¾ - - -	2 81
	2 lb. ground pepper, 50, 6 plates 50 - -	1 00

1843.		
Oct. 13	2 boxes mustard, 50, 1 bush. salt, 75 - -	$1 25
	4 bars soap, $1, 1 doz. tow-hooks, 75 - -	1 75
	½ lb. wire, 75, small wire, 37 - - -	1 12
	1 line, $1, 1 bott. sweet oil, 63 - -	1 63
	2 galls. lamp oil, $3, 2 galls. paint oil, $3 -	6 00
	4 skeins linen twine, $1, 10 lb. apples, $1 -	2 00
	4 axes, $1 50, 2 boxes salt, 38 - - -	6 38
	1 side rigging leather, $3 75 - - -	3 75
	1 mess pan, $1 25, 7 yds. buntine, $2 63 -	3 88
	2 tow-lines, $2 50, 1 bath brick, 13 - -	2 63
	2 plugs tobacco, $1, thread and needles, 37 -	1 37
	6 yds. dungaree, $1 50, 1 box pills, 25 -	1 75
	1 tin pan, 2s., 1 tin pot, 2s., 1 spoon, 1s. -	63
Nov. 3	1 bag coffee, 150 lb., 11 cts., $16 50, 1 bbl. beef, $12 - - - - -	28 50
21	1 bbl. beef - - - - -	12 00
Dec. 5	1 " do $12, 6 lb. tea, $6 - - - -	18 00
	1 bush. beans, $3, 2 cans mustard, 50 - -	3 50
	2 balls cot. twine, $1, 3 bbls. potatoes, $5 25 -	6 25
15	To amount bill of cotton canvass, paid cash in New York, 9 packages, No. 2, 932½ yds., 32 c.	297 76
	1 package, No. 8, 118¼ yds., 24 cts. - -	28 38
	Add 10 per ct. on $326 14, for commission and expenses - - - - -	32 61
	Cash paid freight on canvass - - -	2 31
21	5 lb. composition spikes, $1 56, 4 lb. iron spikes, 60 - - - - - -	2 16
	1 coil manilla rope, 263 lbs., 15 - -	39 45
	1 bale oakem - - - - -	5 00
22	Matches, 1s., pepper, 1s., onions, 3s. - -	63
	5 lb. comp. spikes, 31, ½ bbl. pitch, $2 50 -	4 06
23	1 pr. hand brushes, 62 cts., 2 corn brooms, 37, 75	1 37
	26 lb. verdigris, 56¼ cts. - - -	14 62
	2 galls. oil, $3, 1 bbl. beef, $12 - -	15 00
26	6 lb. comp. spikes, $1 88, 2 qrs. sand paper, 75	2 63
	Bill clothing delivered Andrew Johnson, per order E. P. Hunt - - - -	10 38
	1 paper copper tacks, $1, comp. nails, $1 12 -	2 12
	2 galls. vinegar, $1, 1 lb. copper nails, 63 -	1 63
26	1 bot. varnish, $1, 2 lb. butter, 50 - -	1 50
	2 lb. cheese, 25, 2 lb. iron spikes, 30 - -	55
27	1 bbl. flour, $7, 1 gall. tar, 50 - - -	7 50
	½ gal. sp. oil, 75, 1 box salt, 19 - -	94
29	1 coil manilla, 44 lb., 15, 13 lb. iron spikes, 15	8 55

Schedule A—Continued.

1843.		
Dec. 29	1 pr. braces for Wm. White - - -	$0 75
	7 1st size comp. thimble, 4s., $3 50	
	7 2d " " " 3s., 2 63	
	5 3d " " " 2s., 1 25	
	14 small " " 1s., 1 75	
		9 13
	12 lb. pitch, 5 - - - - -	60
30	2 lb. butter, 50, ½ lb. copper nails, 3s. - -	81
	Sand paper, 25, 2 galls. tar, $1 - -	1 25
1844.		
Jan. 1	Pitch, 25, 4 lb. marline, $1, 2 lb. putty, 25 -	1 50
	7 lb. verdigris, 4-6 - - - -	3 94
	1 doz. papers matches, 50, 2 lb. pepper, 50 -	1 00
	2 galls. tar, $1, 2 hickory brooms, 50 - -	1 50
2	Rigging leather - - - -	1 50
3	25½ lb. manilla rope, 15 - - -	3 83
	1 bag coffee, 196 lb., 11 cts. - - -	21 56
4	1 lb. iron spikes, 15, 6½ lb. putty, 81 - -	96
	2 bbls. mess pork, $24, 8 lb. bonnet line, $2, pitch, 50 cts. - - - -	26 50
5	2 brown linen table covers - - -	5 00
	2 towels, 50, $1, 1 tin pan, 50 - - -	1 50
	3 spoons, 19, 2 galls. varnish, $1 25 - -	1 44
	2 galls. sp. oil, $3, 2 lb. green tea, $2 50	5 50
	3 galls. paint oil, $4 50, 2 kegs W. lead, $7 -	11 50
	2 kegs yellow ochre, $7, 1 can chrome yellow, $1 25 - - - - -	8 25
	½ bush. beans, $1 50, 1 coil ratline, 55 lb. 16, $8 48 - - - - -	9 98
	1 coffee pot, $1, 1 pan, 3s., 1 bake pan, $1 50	2 88
	½ doz. soup plates, 63, ½ doz. dinner do., 62 -	1 25
	1 box mustard, 50, 1 bot. S. oil, 63 - -	1 13
	3 doz. fish-hooks, 50, 6 bars soap, $1 50 -	2 00
	2 fish lines, $1 25, 2 scrub brooms, 50 - -	1 75
	2 pencil brushes, 3s., 1 small pan, $1 50 -	1 88
	4 galls. vinegar - - - -	1 50
	1 nail hammer, 75, 2 cans chrome green, $3 -	3 75
6	2 lb. copper nails, $1 25, 2 lb. cut nails, 20 -	1 45
	4 skeins twine - - - - -	1 00
	3 mast hoops, 69 in., 5 cts. - - -	3 45
	1 gal. spts. turpentine - - - -	1 25
17	2 quires sand paper - - - -	1 12
30	2 bbls. mess beef, $24 - - - -	24 00
	1 " " pork, $14 - - - -	14 00

Schedule A—Continued.

1844.		
Jan. 30	1 bbl. flour, $7, 6 lb. green tea, $6 - -	$13 00
	2 lb. pepper, 50, 2 boxes mustard, 50 - -	1 00
	3 galls. lamp oil, $4 50, 5 galls. vinegar, $1 88	6 38
	75 lb. rice, 5 cts. - - - -	3 75
Feb. 2	3 lb. chrome green, $1 50 - - -	4 50
		$1,223 02

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS OF THE SLOOP TEXAS, in the hands of Hiram Benner, Salisbury Haley, and Joseph B. Browne, assignees of Eleazer P. Hunt.

Interrogatories to be answered by Joseph B. Browne, Salisbury Haley, and Hiram Benner, assignees aforesaid.

1st. Did you, or any of you, as assignees of Eleazer P. Hunt, sell, cause to be sold, the sloop Texas; and if so, when, and how was she sold?

2. To whom was said vessel sold, and for what sum of money?

3. Was said sloop sold on time, or for cash? Was any time given to the purchasers thereof to pay for her? If so, what time? How was payment, or part payment, secured to be paid? By note, or by what security; and by whom was such security given?

4. When was the said sloop finally paid for by said purchasers, and to whom was said payment made?

5. When and at the time the said sloop was sold at public outcry by yourselves, did you not know that Joseph Y. Porter, the libellant in this cause, had a claim, account, and demand against the said sloop for supplies?

6. When said sloop was sold as aforesaid, did you, or either of you, or did you, or either of you not, know that said libellant had filed a libel against the sloop for his said claim, account, and demand?

7. At and before the time the said sloop was sold as aforesaid, did or did not you, or either of you, know that said libellant had instituted proceedings in this court against the said Eleazer P. Hunt, the then late owner of said sloop, for and on account of his said claim, account, and demand aforesaid?

8. At and before the time that the purchase money of the said sloop was finally paid, did or did not you, or either of you, know that said Porter had filed his libel against said sloop to enforce his claim and de-

mand aforesaid against her? Had you, or either of you, not heard or learned that he had so done?

9. At or before the time when the purchase money of the said sloop was finally paid by the purchasers thereof, to you, or either of you, had you, or either of you, heard or learned, or had you not heard or learned, that said Porter had instituted proceedings against the said Eleazer P. Hunt, the then late owner of said sloop, to enforce his said claim and demand aforesaid?

10. At or before the time the said purchase money of said sloop was finally paid to you, or either of you, did or did not you, or either of you, know that said Porter had obtained in this court, from the honorable Judge Marvin, a decree against the said Hunt; and that upon the said decree the said Hunt was imprisoned; and that said Hunt had escaped from prison without satisfying said decree?

11. And did you, or either of you, at or before the purchase money of said sloop was finally paid as aforesaid, know that said decree was rendered against said Hunt, to enforce the payment of, and for the benefit of, the aforesaid claim and demand of said libellant, Porter?

12. At, during, or before the time that you, or either of you, had the management or control of said proceeds of said sloop Texas, or of any portion thereof, did you, or either of you, know that said Porter had a claim or demand against the said sloop Texas for said supplies, or that said Porter had obtained a decree against said Hunt for and on account of said supplies?

S. R. MALLORY, *Proctor*.

And on the 27th day of March aforesaid, the said libellant, by his said proctor, filed in the office of said clerk further interrogatories, as follows, to wit:

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS OF THE SLOOP TEXAS, in the hands of the assigns of Eleazer P. Hunt, viz., Hiram Benner, Joseph B. Browne, and Salisbury Haley, assignees aforesaid.

1. Were you, or were you not, appointed by Eleazer P. Hunt as his assignees? When were you appointed? How were you appointed? Produce the instrument of your appointment, whether deed or other paper, upon the trial of this cause in open court.

2. Was not the sloop Texas turned over to you as a part of the property of said Eleazer P. Hunt? Did you not receive it as such, and did you not sell it as such?

S. R. MALLORY, *Proctor*.

Afterwards, to wit, on the fourth day of April, 1846, came the said Browne, Haley, and Benner, by A. Gordon, their proctor and advocate, and filed in the office of said clerk their protest and answer, in the words following, to wit:

1496

To the honorable William Marvin, judge of the superior court, for the southern district of Florida.

J. Y. PORTER
against
THE PROCEEDS OF THE SLOOP TEXAS, in the hands of Hiram Benner, Joseph B. Browne, and Salisbury Haley, late assignees of E. P. Hunt.

The said Hiram Benner, Joseph B. Browne, and Salisbury Haley, having been cited to appear and answer the libel against the proceeds of the sloop Texas, do now appear, and for protest and answer say:

First. That this court ought not to take or hold further jurisdiction of the subject matter, because they say that this court was established as the superior court for the southern district of the Territory of Florida, by act of Congress approved May 23d, 1828; and they say that the Territory of Florida was admitted as a State into the Union of the United States, by act of Congress approved March 3d, 1845. And by an act of Congress, "entitled an act supplemental to an act for the admission of Florida and Iowa into the Union, and for other purposes," approved March 3d, 1845, (sec. 3,) it is enacted that the State of Florida shall compose one district, to be called the district of Florida, and a district court shall be held in said district, to consist of one judge, who shall reside within the district to which he is appointed, and to be called a district judge. And they say that the last mentioned act, proprio vigore, repealed and annulled the act of 1828; that there is no longer any southern district of the Territory of Florida; and they say that this court ought not to hold or take jurisdiction of this matter.

Second. They further say, that the said libellant Porter, at the time when he furnished the supplies mentioned in his said libel, to the sloop Texas, resided in and transacted his business at the city of Key West; that E. P. Hunt, the then owner of the sloop Texas, also resided in and did business at the said city of Key West, and that the said sloop Texas then hailed from and belonged to the said Key West, and from no other place. And they deny that by virtue of the general admiralty law any lien whatever on said sloop accrued to said Porter. They also deny that any exists by virtue of any territorial law, for they charge, the said sloop, after the said supplies were furnished, was suffered by the said Porter to depart from Key West frequently, without enforcing said lien, and by the terms of the act the same ceases and is lost. And they say that the right of lien is expressly taken away from the libellant, and ceased, by virtue of the act of the legislative assembly of Florida, approved 29th December, 1845, because it was not enforced within 30 days after the same accrued. And they say that the said act of the legislative assembly repeals and annuls the act of the legislative council of 1841; and so they say there is no lien given by any law whatever; wherefore this court ought not to exercise jurisdiction over these respondents, or any funds in their hands.

Third. And the said respondents further say, that the proceeds of the sale of the said sloop Texas came into their hands, as assignees of E. P. Hunt, and trustees of his creditors, on the 20th December, 1844, 20th January, 1845, and 20th February, 1845, and were by them immediately, after the last named date, paid out to the creditors of the said E. P. Hunt. The proceeds were divided between the commissioners of the estate of P. C. Greene, Bramder & Wolf, S. R. Mallory, for James Sanchez, John S. Page, E. Doubleday, and John Clutts. That it is more than one year since the said proceeds were thus paid out and distributed, and they are now entirely ignorant where those proceeds are or may be found. They charge that the libellant knew well that the said Hunt was about to assign to these respondents the sloop Texas and other property, and he strongly urged that the assignment should be made. They charge that the libellant never gave notice to them, or either of them, that he had a claim on said sloop, until he afterwards attempted to arrest her. They charge that the said libellant had full knowledge of the time and place of her sale, how much she was sold for, and at what time the proceeds would come into their hands and be paid out; and they affirm and charge, that he never gave notice to them not to pay the funds out, or that he had a claim on them which he would seek to enforce. Wherefore, they say, this court ought not to take or hold further jurisdiction in this matter.

Fourth. And the said respondents say, in answer more especially, that the schedule or bill of particulars mentioned in the 3d sec. of said libel, as well as the facts set forth in the first section, are not correct. The items as set down and charged were not necessary for said sloop, were charged at enormous and extravagant prices, far above the market price, and they deny that all the articles were delivered to or used on board said vessel. All which they insist may be investigated.

Fifth. They say the facts set forth in the 4th article of said libel are true, with the exception of the first part, which they say is the reverse of the truth. They allege the sloop Texas was attached first, and attempted to be libelled afterwards. They utterly deny that the said sloop was held to answer any decree, or was ever legally in custody; and there is record evidence that she has twice been discharged as illegally detained.

Sixth. They say the facts set forth in the 5th section of said libel are true, but are only a part of the truth. They affirm and charge, that the said libellant advised and strongly urged Hunt to make, and his creditors to accept, said assignment. That without such urging said assignment would not have been accepted; that he knew that the said sloop was to be assigned among other things, and he is morally and equitably bound by that assignment, which he urged and mainly brought about.

7th. The facts set forth in the sixth section of said libel, they believe to be true, with the exception of the word lien, which is thrust in where no lien ever existed, and where none were sought to be enforced. The proceedings against Hunt were personal, in which no lien was alleged

or pretended, and in which third parties were not concerned, or invited, or admonished to be present by any monition from the court.

8th. The 7th and 8th articles they believe to be true.

9th. The respondents say the 9th article is not true in any particular. They at no time had notice, knowledge, or belief, that the libellant had a lien, claim, or demand on the sloop Texas, either when they sold or conveyed said sloop, or before or since. And they assert, that he had no such lien, claim, or demand on said sloop by virtue of any decree, law, or usage whatever. And that he had taken no legal steps either to establish or enforce such lien.

10th. The respondents deny in toto the allegations, inferences, and facts set forth in the 10th article of said libel. And they say, by a decree of this court, delivered on the 2d day of March, 1846, in a matter of libel against said sloop, wherein J. Y. Porter was libellant, and Tift and others respondents, to enforce said pretended lien and claim, the said libel was ordered to be dismissed. And they affirm the legal effect of such decree is a clear denial of the existence of any lien, claim, or demand on said sloop Texas. And they affirm, that as it has been decided there exists no lien on the sloop, there cannot be any on the proceeds of its sale.

11th. These respondents deny the whole of article 11 of said libel, and say, that from the time of the dismission of J. Y. Porter's libel, improperly filed against the sloop Texas, to wit, on the 15th March, 1844, 24 days elapsed; the said sloop all the while lying within the jurisdiction of this court, and within reach of its process, and yet no proceedings were filed against said sloop. At the end of the 24 days, the libellant elected to proceed against Hunt in personam. By which proceedings these respondents understood and believed that he abandoned all idea of proceeding against the sloop. These respondents never believed he had any legal claim on said sloop, and they are confident, and so charge the truth to be, that the libellant was of the same opinion for more than a year. At the expiration of more than a year, he filed his libel against said sloop, and the decree obtained in effect decided that he had no lien, claim, and demand against said sloop. He has now, after a peroid of a year and a quarter from his first proceedings, filed his libel against the proceeds of the sale of said sloop, and prays that the private property of these respondents may be taken, without regard to said proceeds, to pay the libellant's debt due from E. P. Hunt. These respondents charge, that the conduct of the libellant himself utterly precludes him from having or making any legal claim on the proceeds; for he was the original cause of the sloop Texas being assigned and conveyed to these respondents; it was not only done with his knowledge, but by his advice. He neglected to proceed against the vessel, seeing her sold and transferred, till third parties became interested in her. He waited more than fifteen months, before he filed his claim on the assignees. All the while giving no notice, and keeping his intentions secret, although he saw some of the respondents daily, they all living and doing business in the same village with himself.

These respondents charge, that the libellant had notice and knowledge of the time and place when and where the respondents sold the sloop Texas, the conditions and amount of said sale, at or about the time the proceeds were paid over to them, and at or about the time they paid out and made distribution of the proceeds. And they charge, at no time during the progress of these proceedings, did he breathe the slightest notion that he would claim said sloop or her proceeds. These respondents affirm, that such conduct is not equitable or proper, is contrary to the principles of equity, and is not deserving the favorable consideration of a court based on equitable principles. These respondents say, that the bill of particulars filed show that all or nearly all of the items are outlawed, that the statute of limitations of this State expressly forbid any judgment to be rendered for any item of more than two years standing. Wherefore they pray said libel be dismissed, with the costs of these respondents most wrongfully sustained.

HIRAM BENNER,
J. B. BROWNE,
SALISBURY HALEY,
A. GORDON, *Proctor.*

Subscribed and sworn to before me, this 4th day of April, 1846.
W. C. MALONEY, *J. P.*

In answer to the interrogatories propounded by libellant to respondents, they answer to the—

1st. That they did sell the sloop Texas, as assignees of E. P. Hunt, and as trustees of his creditors, on or about the 20th December, 1844. They sold said sloop at public auction at Key West, after a long notice.

2d. To the second they answer, said sloop was sold to Asa F. Tift, John H. Geiger, Benjamin Sawyer, and Samuel Kemp, as they understood and believe, and for the sum of $1,640.

3d. To the third they answer, the sloop was sold for $\frac{1}{3}$ cash, $\frac{1}{3}$ in 30, and $\frac{1}{3}$ in 60 days. That part on time was secured by notes given by the purchasers which were paid at maturity.

4th. To the fourth they answer, the last and final payment of the sloop was made on the 20th February, 1845, to these respondents; it was paid to H. Benner for himself and companions in trust, and was shortly afterwards distributed among Hunt's creditors.

5th. To the 5th they answer, that neither at the time they sold said sloop, nor at any time since, did they know that Joseph Y. Porter had any lien, claim, or demand against the sloop Texas.

6th. To the sixth they answer, that they did know that J. Y. Porter caused a paper to be filed in court, on or about the 20th of February, 1844, which his proctor has chosen to call a libel, but which was dismissed for being improperly filed; they do not and never did, consider said paper a libel, and they object to its now being raised to such dignity, or any legal effects being pasted to such a nullity.

7th. To the seventh they answer, that before or about the time of the sale of the sloop, they did know that J. Y. Porter had instituted a suit in personam, against E. P. Hunt, for some account he had or pretended

to have against him. This was no concern of these respondents who were not cited to appear, and they protest against its application to this cause.

8th. The eighth interrogatory is fully answered in their answer to the sixth, to which they refer.

9th and 10th. To the ninth and tenth they answer, that they had heard that Porter had instituted proceedings against Hunt to enforce some personal demand; that about the same time *that* Hunt was imprisoned, and escaped from imprisonment, but they always thought that his imprisonment satisfied the decree. This is a personal action in which these respondents never had any interest, and the hearing of which cannot prejudice them.

11th. To the 11th they answer, they had heard a decree was rendered against Hunt to enforce some personal claim, but never knew or believed it was to enforce any claim against the sloop Texas.

12th. The 12th interrogatory is fully answered in their answers to the 6th and 11th, to which they refer.

HIRAM BENNER,
J. B. BROWNE,
SALISBURY HALEY.

Subscribed and sworn to before me, this 4th day of April, 1846.
W. C. MALONEY, *J. P.*

Interrogatories propounded by respondents, to be answered by libellant.

1st. Did you or not, on or about the 12th or 13th of February, 1844, advise and strongly urge the creditors of E. P. Hunt to accept the assignment of his property and dismiss their attachments?

2. Was not the sloop Texas and the brig Lawrence, or its proceeds, then named as a part of Hunt's property to be assigned?

3. Did you or not afterwards obtain from said Hunt a bill of sale of the brig Lawrence, on which you afterwards took possession, and finally sold her?

4. After you got possession of said bill of sale, did you not go to Havana, and authorize S. R. Mallory to give notice that you would not join in the assignment?

5. On your return from Havana, was you not invited to join in the assignment?

6. Did you not know that several of Hunt's creditors had taken out attachments against his property before the assignment, and were dismissed in consequence of the assignment?

7. Had you knowledge of the time and place the assignees of Hunt sold the sloop Texas, and had you heard of the conditions and amount of said sale?

8. Did you ever give notice to the assignees that you had a claim on said sloop Texas while she was in their hands, or that you had a claim on the proceeds of her sale while the same was in their hands? If so, state when, where, how, and what was the nature of the notice.

9. Did you know, or had you heard, at what time the purchase money of sloop Texas would or did come into the hands of the assignees, and at or about the time that they paid them out and made distribution of the same?

10. On or before the 23d day of March last had you not heard, and did you not believe, the proceeds of the sale of the sloop Texas had been before that time paid out and distributed by the assignees of E. P. Hunt?

And now, on the sixth day of April aforesaid, come the said parties to this suit, by their respective proctors and advocates aforesaid, before said court, and the libellant filed in the registry of said court his exceptions to the respondent's answers to his interrogatories; which exceptions were in the words following, to wit:

JOSEPH Y. PORTER, libellant,
vs.
ASSIGNEES OF E. P. HUNT, respondents.

The said libellant, by his proctor, S. R. Mallory, comes into court, and excepts to the answers of the interrogatories propounded to said assignees in this cause, and says, that the answer to the 7th interrogatory is insufficient, incomplete, and indirect and evasive; that the answers to the 12th, 10th, 11th, and 9th interrogatories are also insufficient, indirect, inconclusive, incomplete, and evasive, and altogether insufficient; and he prays the court to compel said respondents to answer in all respects directly and fully to said interrogatories, and to disclose all the matters called for, and within their knowledge, by the same.

S. R. MALLORY, *Proctor.*

Whereupon, on hearing the arguments of the counsel in this cause in open court, it is ordered that the respondents make further answer to the 7th, 9th, 10th, 11th, and 12th interrogatories aforesaid, within ten days from the sixth day of April aforesaid.

And on the same day aforesaid, in open court, comes the said libellant, by his said proctor, and files in the registry of this court his exceptions to answering certain interrogatories propounded by respondents, in the form and words following, to wit:

JOSEPH Y. PORTER, libellant,
against
PROCEEDS of Sloop Texas, in the hands of Browne, Benner, and Haley, assignees of E. P. Hunt.

And now said libellant, by his proctor, S. R. Mallory, comes into court, and excepts to answering the 2d, 3d, 4th, 6th, and 7th interrogatories propounded by said respondents, because he considers them irrelevant to the cause, and he is not bound to answer the same.

S. R. MALLORY, *Proctor.*

Whereupon, on argument of said exceptions in open court, it is ordered by said court that the same be overruled, and that the libellant

answer the interrogatories of the said respondents within ten days from the said sixth day of April.

And on the same sixth day of April aforesaid, the said libellant, by his said proctor, comes and files in the registry of said court additional interrogatories to be propounded to said respondents, in the words following, to wit:

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS of Sloop Texas, in the hands of assignees.

Interrogatories propounded to respondents, Hiram Benner, Joseph B. Browne, and Salisbury Haley.

13. At the time you sold the sloop Texas at public auction, had you, or either of you, not heard, or did you not know, that Joseph Y. Porter had a claim, or demand, for supplies furnished to said vessel?

14. At the time that you, or either of you, received the purchase money for the said sloop, or any portion thereof, had you, or either of you, heard, or had you not, that Joseph Y. Porter had an account for supplies furnished for said sloop Texas?

15. At any time after you sold said sloop, and while the purchase money, or any part thereof, was in your hands, did you, or either of you, know, or did you not know—had you, or either of you, heard, or had you not heard—that said Porter had an account, a claim, or a demand, for supplies furnished to the said sloop Texas?

S. R. MALLORY, *Proctor*.

Whereupon, it is ordered by this court, that the respondents answer the foregoing interrogatories within ten days from said sixth day of April.

Whereupon, the court continued this cause, and adjourned till the sixteenth day of April, instant.

And afterwards, to wit, on the tenth day of April aforesaid, comes said libellant, by his said proctor, and files with the clerk of said court his replication, in the form and words following, to wit:

Replication in

JOSEPH Y. PORTER
against
THE PROCEEDS of Sloop Texas, in the hands of assignees.

And said Joseph Y. Porter, by his proctor, S. R. Mallory, by way of replication to the protest and answer of said assignees, doth aver, that the matters in said answer, so far as they touch the claims of this libellant, are not true in fact, nor sufficient in law to bar his prayer and recovery, as prayed for; and that the matters contained in said libel are true in fact, and sufficient in law to maintain a decree, as prayed for in said libel; of all which matters he is ready to make proof, as the court shall direct. S. R. MALLORY, *Proctor*.

And on the same tenth day of April aforesaid, comes the said libellant, by his said proctor, and files with the clerk aforesaid his answers to the interrogatories of the respondents aforesaid, in the form and words following, to wit:

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS of Sloop Texas, in the hands of assignees, Browne, Haley, and Benner.

Answers to interrogatories propounded by respondents.

1. Answer to the 1st interrogatory. I did not.
2. Answer to the 2d interrogatory. They were.
3. Answer to the 3d interrogatory. Hunt delivered to me a bill of sale of the Lawrence on the 12th of February, 1844. I took possession of her; but she was subsequently sold in New Orleans, in accordance with instructions given by said Hunt; and her proceeds were distributed, in accordance with his said instructions, which were given before he executed said bill of sale
4. Answer to the 4th interrogatory. I did go to Havana after the delivery to me of said bill of sale. During my absence, Hunt made an assignment to Messrs. Browne, Benner, and Haley, contrary to express promise to me, and the effect of which was, as I understood it, to preclude me from the benefit thereof, unless I consented to submit the brig Lawrence as a part of the assigned property for creditors generally. This I was not authorized to do; and, under these circumstances, S. R. Mallory, as my attorney, and by my authority, declared that I would not join in said assignment before said assignment was made.
5. Answer to interrogatory 5th. I was not.
6. Answer to interrogatory 6th. I have heard of some attachments of Hunt's creditors against his property, taken out before the assignment was made; but I do not know they were dismissed.
7. Answer to 7th interrogatory. I had knowledge of the time and place, but not of the conditions and amount of sale.
8. Answer to 8th interrogatory. I did notify the assignees of Hunt, while the Texas was in their hands, that I had a claim against her; and I notified them of the nature and extent of it; the precise time when I thus notified them I do not remember; but I talked with them, or some of them, freely all about it.
9. Answer to 9th interrogatory. No, I did not know, and had not heard.
10. Answer to 10th interrogatory. No, I had not heard, and I did not believe.

J. Y. PORTER.

Subscribed and sworn to before me, this 8th of April, 1846.
FERNANDO J. MORENO,
Notary public.

And afterwards, on the thirteenth day of April aforesaid, comes the said libellant, by his proctor aforesaid, and files in said clerk's office the following stipulation, to wit:

SUPERIOR COURT,
Southern district of Florida:
Before his honor Judge Marvin.

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS of sloop Texas, in the hands of Joseph B. Browne, Salisbury Haley, and Hiram Benner, assignees of E. P. Hunt.

We, Joseph Y. Porter, as principal, and Oliver O'Hara, as surety, are held and bound unto the said Joseph B. Browne, Hiram Benner, and Salisbury Haley, in the sum of two hundred and fifty dollars; for the payment of which, we bind ourselves, our heirs, executors, and administrators. Sealed with our seals, and dated at Key West, this 10th April, 1846.

The condition of this obligation is, that if the said Joseph Y. Porter shall pay, or cause to be paid, unto said Joseph B. Browne, Hiram Benner, and Salisbury Haley, their heirs or assigns, all such costs as may be decreed against him in the above cause, in this court and in any appellate court to which this cause may be carried, then said obligation to be null and void, otherwise to remain in full force and virtue.

JOSEPH Y. PORTER, [SEAL.]
O. O'HARA. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN W. PORTER,
JOHN C. HOYT.

And on the 14th day of April aforesaid, the respondents aforesaid, by A. Gordon, their proctor, filed in the office of said clerk their amended answers to certain interrogatories propounded by libellant, in the words following, to wit:

7. To the 7th interrogatory they answer: That, at and before the time mentioned, they did not know that the libellant had instituted proceedings against Hunt in this court for his said claim, account, and demand aforesaid.

8. The 8th is fully answered in their answer to the 6th, to which they refer.

9. To the 9th they answer. That, at or before the time mentioned, they had not heard or learned that said Porter had instituted proceedings against the said Hunt to enforce his said claim and demand aforesaid.

10. To the 10th they answer. That, at or about the time mentioned, they did hear from general rumor that Porter obtained a decree against

Hunt; that Hunt was imprisoned, and made his escape from prison; but they heard nothing of his paying said decree.

11. To the 11th they answer. That, at the time mentioned, they did know that the said decree was rendered against Hunt, to enforce payment of his, libellant's, aforesaid claim and demand.

12. To the 12th they answer. That, at the time mentioned, they did not know that the said Porter had a claim or demand against the sloop Texas for supplies, or that he had a decree against Hunt for and on account of said supplies.

1. To the 1st subsequent interrogatory they say. That they were appointed trustees by Hunt's creditors, on or about the 13th of February, 1844. That Hunt acquiesced in such appointment, and even suggested that the creditors should name their own trustees.

2. To the 2nd subsequent interrogatory they say. The sloop Texas was turned over to them, among other property, as Hunt's property, to be held by them in trust for the benefit of all his creditors pro rata; it was received by them for that purpose, and was sold by them, not as Hunt's property, but as the property of the trustees for the use aforesaid.

13, 14, and 15. In answer to the 13th, 14th, and 15th subsequent interrogatories they say. At the time they sold the sloop Texas, at the time they received the purchase money for her, and at the time they paid it out, they did not know that Porter had a claim or demand for supplies furnished said Sloop, but they did hear from a general rumor that Porter pretended to have generally a claim or demand against Hunt, but for what particular thing or things that claim was for they did not hear.

Porter never gave these respondents notice, either verbally or in writing, of any claim he had on the sloop or its proceeds, or of any claim he had on Hunt. They know that Hunt claimed that Porter owed him a balance of $1,100; and therefore Porter's is a disputed claim.

HIRAM BENNER,
SALISBURY HALEY.

Subscribed and sworn to before me, 14th April, 1846.
W. C. MALONEY, *J. P.*

Sworn to by Haley, before me, April 14th, 1846.
L. W. SMITH, *Clerk.*

JOSEPH Y. PORTER
vs.
PROCEEDS sloop Texas, in the hands of J. B. Browne, Salisbury Haley, and Hiram Benner.

The answer of J. B. Browne, to the interrogatories propounded by the libellant's proctor, in this cause:

1. To the 1st interrogatory. I say, as one of Hunt's assignees, I did see the sloop Texas at public aution on the

2. To the 2nd. I answer, that the said sloop was sold to John H. Geiger, Asa F. Tift, Samuel Kemp, and Benjamin Sawyer, for the sum of $1,640.

3. To the 3d. I answer, that the said Sloop was sold for ⅓ cash, ⅓ in 30 and ⅓ in 60 days, the purchasers giving a note to secure the payment of the two last instalments. The security was of course given by the purchasers.

4. To the 4th. I answer, that the said sloop was finally paid for in , and that said payment was made, as I understood and believe, to Hiram Benner, one of the trustees of said Hunt.

5. To the 5th. I answer, no.

6. To the 6th. I answer, that at the time the said sloop was sold as aforesaid, I knew that the libellant had filed a libel against the said sloop for an alleged account against the said sloop; but, as the libel had been dismissed, I took it for granted that that was the end of it.

7. To the 7th. I answer, that, at the time aforesaid, I knew that libellant had instituted proceedings against the said Hunt, for an alleged account for supplies furnished the said sloop; but from the time of the sale of the said sloop, until and after the proceeds were finally distributed, I believe that the said alleged account was not a legal or equitable account against the said sloop, and such I have repeatedly heard and believed was Porter's opinion; and hence his not commencing this prosecution until this late day. Certain it is, that Porter never requested or claimed of me any part of the said proceeds; and I am informed, and I believe, that he never claimed or requested any of either of the other assignees, on account of the said alleged claim, before the commencement of this suit.

8. To the 8th. I answer, that I had the knowledge mentioned in the two preceding answers at and before the time when the said purchase money was paid out.

9. To the 9th. I say, it is already replied in the above answers.

10. To the 10th. I answer, that at the time last aforesaid I knew that said Porter had obtained a decree against the said Hunt from the Hon. Judge Marvin; and that, upon the said decree, said Hunt was imprisoned, and that he escaped from prison, but whether the decree was satisfied I do not know.

11. To the 11th. I answer, that at the time last aforesaid I knew that the said decree was rendered to enforce the payment of the alleged account mentioned in my 7th answer.

12. To the 12th. I answer, that I at no time had the management or control of the proceeds of the sale of the said sloop Texas, or any portion thereof; therefore this interrogatory is inapplicable to me.

To the first interrogatory filed March 27th. I answer, that I was appointed by E. P. Hunt, as one of his assignees, by an instrument in writing, which is now in court.

To the 2nd. I answer, that the sloop Texas was turned over to me and the other assignees of Hunt, as a part of his property, and was received as such.

The 13th, 14th, and 15th interrogatories, April 6th, are fully replied to in my foregoing answers.

J. B. BROWNE.

Sworn to and subscribed before me, 14th April, 1846.

W. C. MALONEY, *J. P.*

Interrogatories propounded by respondents, to be answered by Joseph Y. Porter, libellant:

11. Did you or not, on the 12th, 13th, or 14th of February, 1844, advise and urge Hiram Benner, Joseph B. Browne, and Salisbury Haley, or either of them, among others of Hunt's creditors, to accept the assignment of Hunt's property, and dismiss their attachments.

12. At or about the time mentioned in the foregoing interrogatory, did you not know, understand, or believe, that the persons named in the foregoing interrogatory claimed to be creditors of Hunt, and that Joseph B. Browne claimed to be a creditor of Hunt, as one of the commissioners of the estate of the late P. C. Greene? Did you not meet with them and converse with them as creditors of E. P. Hunt?

13. Did you not, at or about the time aforesaid, hold several conversations with the above named persons, among others of Hunt's creditors, relative to the assignment of Hunt's property? And did you not then promise, intend to be understood by them, that you would be bound by the assignment if they would, and take a pro rata dividend with them in case of the assignment being made?

14. Did you, after your return from Havana, on or about February, 1844, refuse to join with Hunt's creditors in the assignment of his property? Did you so refuse in a conversation with H. Benner? Did you tell said Benner that you had got the brig Lawrence and they the sloop Texas; that you would keep the brig, and they might keep the sloop Texas, or words to that effect?

15. Did you not learn immediately on your return from Havana, that Benner, Browne, and Haley were trustees for Hunt's creditors? Why did you not, immediately after the 15th day of November, 1844, commence proceedings against the sloop Texas?

16. From the 15th November, 1844, to January, 1846, did you know or believe that you had any lien, claim, or demand on the sloop Texas, or her proceeds?

A. GORDON, *Proctor.*

And on the sixteenth day of April aforesaid, the libellant aforesaid filed in the clerk's office aforesaid his answers to certain interrogatories, as follows, to wit:

JOSEPH Y. PORTER, libellant,
against
THE PROCEEDS OF SLOOP TEXAS, in the hands of assignees, J. B. Browne, Salisbury Haley, and Hiram Benner.

SUPERIOR COURT, *southern judicial district of Florida:*

And now, the said Joseph Y. Porter, libellant in this cause, for answer to the interrogatories propounded by said respondents therein, on the 14th day of April, 1846, says:

1302.

11. To the 11th interrogatory. I did not.

12. To the 12th. On the 12th February, 1844, I understood that Benner, Haley, and Browne claimed to be creditors of Hunt, the latter representing the claim of the estate of P. C. Greene. I did meet several of the creditors that day.

13. To the 13th. I do not recollect any other meeting than the one above named, and I made no promise with respect to being bound by any assignment that was to be made.

14. To the 14th. After my return from Havana in February, 1844, I never was invited to join the assignment, and I never refused. I did not tell said Benner they might keep the sloop. I may have told him that I would keep the brig; but if I did, I do not recollect.

15. To the 15th. I did.

16. To the 16th. It is difficult to say why I did not commence proceedings as inquired of; between the dates mentioned I did believe that I had a claim against the sloop Texas. J. Y. PORTER.

Subscribed and sworn to before me, this 16th April, 1846.

L. W. SMITH, *Clerk.*

And now, on the same sixteenth day of April last aforesaid, come the said parties, by their respective proctors and advocates, before said court, and the trial of said cause is continued; on which day, also, the following stipulation was filed by said respondents:

SUPERIOR COURT IN ADMIRALTY.

JOSEPH Y. PORTER,
vs.
THE PROCEEDS OF SLOOP TEXAS, in the hands of Haley, Browne, and Benner.

In open court, April 16th, 1846.

In pursuance of an order entered in this cause, the undersigned, Hiram Benner, with George Stafford, his surety, Joseph B. Browne, with L. Windsor Smith, his surety, and Salisbury Haley, with Asa F. Tift, his surety, do stipulate and agree, each for himself, with Joseph Y. Porter, the libellant, that he and his surety, their heirs and representatives, will pay and satisfy, and perform the decree that may be rendered against him in this court, or in any appellate court, and will satisfy and perform all orders made in this court, or in the appellate court.

HIRAM BENNER,
his
GEORGE X STAFFORD,
mark.
J. B. BROWNE,
L. WINDSOR SMITH,
SALISBURY HALEY,
A. F. TIFT.

Witness— A. GORDON.

Sureties approved. WM. MARVIN, *Judge.*

And this cause being continued, the court adjourned till the seventeenth day of April aforesaid.

And on the said seventeenth day of April, come the said parties as aforesaid before this court, and respondent Benner aforesaid files the following stipulation, to wit:

SUPERIOR COURT IN ADMIRALTY.

JOSEPH Y. PORTER
vs.
THE PROCEEDS OF THE SLOOP TEXAS, in the hands of Haley, Browne, and Benner.

In open court, April 17, 1846.

In pursuance of an order entered in this cause, the undersigned, Hiram Benner, with William A. Pitcher, his surety, hereby stipulates and agrees with Joseph Y. Porter, the libellant in this suit, that he and his surety, their heirs and representatives, will pay and satisfy, and perform the decree that may be rendered against him in this court, or in any appellate court, and will satisfy and perform all orders made in this court, or the appellate court.

HIRAM BENNER,
WILLIAM A. PITCHER.

Approved. WILLIAM MARVIN, *Judge*.

And this cause being continued, the court adjourned until the twentieth day of the same month of April aforesaid.

And now, on the twentieth day of April aforesaid, come the said parties, by their respective proctors and advocates aforesaid, before said court, and the trial of this cause is continued; and on hearing the further proofs and the arguments of counsel in this cause, and not being fully advised what decree to render in the premises, the court held over the same for further advisement.

And now, on the twenty-second day of May, 1846, come the parties aforesaid, by their said proctors, before said court, and the court being fully advised in the premises, delivered its decree in writing, as follows, to wit:

SUPERIOR COURT: *In admiralty, May 22d*, 1846.

JOSEPH Y. PORTER
vs.
THE PROCEEDS OF SALE OF SLOOP TEXAS, in the hands of Benner, Browne, and Haley.

The facts and circumstances of this case being fully considered, it is ordered, adjudged, and decreed, that the libellant is entitled to recover from the respondents the sum of twelve hundred and twenty-three dollars and two cents, for supplies furnished to the sloop Texas, as in the libel set forth; and it is accordingly so decreed, and that he have execution thereof in the nature of a fieri facias, and that the marshal collect

from each of the respondents his proper proportion of said sum, and the costs and expenses of the suit.

WILLIAM MARVIN, *Judge.*

The decree in this case having been pronounced, Mr. Gordon, proctor for the respondents, prayed an appeal in open court from the decree, which is allowed. Stipulation having been heretofore given, and that he have leave to amend his pleadings, and take testimony before the clerk.

WILLIAM MARVIN, *Judge.*

Mr. Mallory, for the libellant, also asked leave to appeal, which is allowed.

WILLIAM MARVIN, *Judge.*

And now, on the fourteenth day of May, in the year one thousand eight hundred and forty-seven, comes Adam Gordon, esq., proctor aforesaid, before the said United States district court, for the southern district of Florida; and on his motion, it is ordered, that all the records, files, and papers relating to the proceedings of the late superior court, for the southern district of Florida, now in possession of the late clerk of said court, be transferred to the office of the clerk of this court, and be by him safely kept.

Afterwards, on the twenty-sixth day of May, in the year last aforesaid, comes the said proctor, and files his prayer for appeal in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
For the southern district of Florida:

KEY WEST, *May* 24, 1847.

And now, Joseph B. Browne, Hiram Benner, and Salisbury Haley, by their proctor, A. Gordon, come into this court, and pray an appeal to the Supreme Court of the United States, from the decree pronounced by the judge of the late superior court, for the southern district of Florida, on the 22d day of May, 1846, in the matter of libel in personam, wherein Joseph Y. Porter was libellant, and the said Browne, Benner, and Haley, were respondents.

A. GORDON, *Proctor.*

UNITED STATES DISTRICT COURT,
Southern district of Florida:

In open court, May 26th, 1847.

Whereupon, it appearing to the court that the record and proceedings in the above cause have been duly transferred into this court, it is ordered, that an appeal be allowed as prayed, in pursuance of the statute in such cases made and provided.

WILLIAM MARVIN, *Judge.*

I, Theodore A. Pinkney, clerk of the United States district court, for the southern district district of Florida, do hereby certify, that the foregoing thirty-seven pages contain a true and complete copy of the record of the proceedings in the case of Joseph Y. Porter vs. The Proceeds of sale of the Sloop Texas, in the hands of Joseph B. Browne, Hiram Benner, and Salisbury Haley, assignees of Eleazer P. Hunt, lately adjudicated in the late superior court, for the southern district of Florida, as appears from the admiralty register and the files of the said court kept in my office; together with such proceedings as have been had in the said United States district court, for the southern district of Florida, in relation to said case.

In testimony whereof I hereunto set my hand and the seal of said court, at Key West, in the said district, this fifth day of June, in the year one thousand eight hundred and forty-seven.

SEAL.]

T. A. PINKNEY, *Clerk.*

UNITED STATES OF AMERICA,

United States district court, southern district of Florida:

I, William Marvin, judge of the United States court in the said district, do hereby certify, that Theodore A. Pinkney is clerk of the said court; that full faith and credit are and ought to be given to his attestations as such, and that the preceding record, and the said clerk's certificate thereto, are in due form of law.

Given under my hand, at Key West, in the said district, this fifth day of June, in the year one thousand eight hundred and forty-seven.

WILLIAM MARVIN.

In the superior court, for the southern district of Florida.

J. Y. PORTER, libellant,
vs.
PROCEEDS of sloop Texas, Benner, Browne and Haley, claimants.

Clerks' fees vs. Libellant.

1846.		
Mar. 24	Filing libel and interrogatories	$0 06
" 27	Filing additional do.	0 06
	Oath and jurat to libel	0 30
	Order for monition	0 25
	Monition and return	1 40
April 6	Certified copy claimant's answer, and answers to interrogatories, fo. 34	5 75
	Filing exception to claimant's interrogatories	0 06
	Rule overruling do., and order to answer	0 25
	Filing further interrogatories	0 06
	Rule for claimant to answer interrogatories	0 25
	Filing libellant's exception to respondent's answers to interrogatories	0 06

Clerk's fees—Continued.

1846.		
April 6	Continuance to the 16th - - -	$0 25
	Filing libellant's stipulation for costs - -	0 05
	Order for claimant to file costs - -	0 25
	Filing replication - - - -	0 06
	Certified copy claimant's answers, filed 14, fo. 15	2 64
April 16	Filing answers to interrogatories - -	0 12
	Swearing two witnesses in court - -	0 20
	Continuance to 20th - - -	0 25
April 20	Swearing five witnesses in court - -	0 50
	Order for continuance - - -	0 25
	Order granting appeal - - -	0 25
	Do. entering and filing decree - -	0 56
	Do. clerk's bill costs - - - -	0 75
	Taxed at - -	$14 64.

WM. MARVIN, *Judge*.

JOSEPH Y. PORTER
vs.
THE PROCEEDS sloop Texas.

Marshal's fees.

Costs on behalf of Porter.

To service of notice and return - - - -	$02 15
To service of five subpœnas *a* 2 of - - -	12 50
To calling five witnesses *a* 12½ - - - -	0 62½
Taxed at - - -	$15 27½.

June 30*th*, 1847. T. A. PINKNEY, *Clerk*.

J. Y. PORTER
vs.
PROCEEDS sloop Texas.

Marshal's fees.

Costs on behalf of claimants.

To service of four subpœnas *a* $2 50 - - -	$10 00
To calling four witnesses, *a* 12½ - - - -	0 50
Taxed at - - - -	$10 50.

June 30*th*, 1847. T. A. PINKNEY, *Clerk*.